

JOHN A. WAITE, JR.
Claimant

WESTERN INDUSTRIES, (KSQ, INC.)
Respondent

CNA INSURANCE COMPANIES
Insurance Carrier

¹ The preliminary hearing in this case was held on April 11, 2002, but no testimony was presented. The respondent had taken claimant's discovery deposition on March 29, 2002. By agreement of the parties at the April 11, 2002, preliminary hearing, that deposition was included as part of the preliminary hearing record.

need for medical treatment, it is related to his present employment activities and has no relationship to his employment with respondent.

Conversely, claimant requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

Claimant's testimony is the only testimony contained in the preliminary hearing record. In addition, the preliminary hearing record contained only one exhibit. The respondent offered and the ALJ admitted, at the April 11, 2002, preliminary hearing, a Chiropractic Case History completed and signed by the claimant on August 30, 2001, for the Ark City Chiropractic. The Board finds claimant's testimony was uncontradicted and respondent failed to show that the testimony was untrustworthy. Uncontradicted evidence not unreasonable or improbable and not shown untrustworthy, is regarded as conclusive.²

The Board finds that the ALJ's preliminary hearing Order that granted claimant's request for preliminary hearing benefits should be affirmed. The Board finds claimant established through his testimony that he initially injured his neck and low back in a fall at work on March 17, 2001. He then notified his supervisor of the accident and completed an accident report. Later claimant requested medical treatment and respondent provided medical treatment on one occasion with a Dr. Faimon on April 9, 2001.

Claimant returned to work but his neck and low back continued to worsen. On August 30, 2001, claimant sought chiropractic treatment on his own. After the one treatment, he then returned to respondent and requested respondent to provide additional chiropractic treatments. Respondent refused to provide the treatment. Claimant received seven more chiropractic treatments that claimant testified provided some relief for his pain and discomfort. Because respondent refused to provide these treatments, claimant made a claim under his personal health insurance policy.

Respondent laid claimant off of work for economic reasons on September 16, 2001. Claimant then found employment with Rubbermaid. Claimant testified his job activities with Rubbermaid simply annoyed his preexisting neck and back injuries and had not made those injuries worse. Claimant established through his testimony, he remains symptomatic

² Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, Syl. ¶ 5, 573 P.2d 1036 (1978).

as the result of the injuries he received while working for respondent and is in need of medical treatment for his continuing symptoms.³

In a letter dated February 13, 2002, claimant's attorney sent respondent a written claim for compensation. The Board finds this claim was timely because it was filed within 200 days of claimant's September 16, 2001, date of accident, the last day claimant worked for respondent.⁴

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Nelsonna Potts Barnes' May 8, 2002, preliminary hearing Order is affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

BOARD MEMBER

c: Kevin T. Stamper, Attorney for Claimant
Todd King, Attorney for Respondent
Nelsonna Potts Barnes, Administrative Law Judge
Director, Division of Workers Compensation

³ See Graff v. Trans World Airlines, 267 Kan. 854, 863-64, 983 P.2d 258 (1999) (holding that claimant's testimony alone is sufficient evidence to establish her own physical condition).

⁴ See K.S.A. 44-520a.